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February 1, 2001

Dear Xxxxx:

This letter is in response to your letter dated December 26, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing this request to you in hopes of obtaining clarification on certain tax matters particular to the following taxpayer:

NAME/ADDRESS

COMPANY is a company that fabricates and then sells the unique customer dental crowns directly to dentists, who then install them into patient's mouths. Materials used are porcelain, precious metals, and titanium.

Historically clients direct costs are always less than 30% of the sales price. They currently do not allocate the sales price between labor and materials when they invoice their customers (dentists). Currently, COMPANY is paying the higher non-medical rate Sales and Use Tax on the materials they purchase from their vendors. COMPANY does not charge their customers (dentists) tax when they sell them the final product.

Question 1

Does COMPANY qualify as a serviceperson transferring tangible property along with the performance of service?

Question 2

Do custom crowns qualify as a medical appliance when determining what rate to charge, if any?

Question 3

Based upon the above facts, how should COMPANY collect, pay, and remit and Sales or Use Tax they would be obligated to, while performing their service?

I trust that I have supplied you with enough information to base an opinion on the matter involved. Should you need anything else, please feel free to contact me.

Thank you in advance for your help and consideration on this matter.

Under Illinois law, a dentist engaged primarily in a service occupation and therefore deemed a serviceman. As a serviceman, tax liability can be assessed in one of four ways. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. They are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2(a) of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers.

because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Assuming that you qualify as a serviceman under the fourth method above, (your annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of your annual gross receipts from service transactions and you are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act) you would pay your supplier Use Tax on the cost price of the tangible personal property you transfer to your customers in conducting your service.

Please note that a medical appliance is an item that is intended by the manufacturer to directly substitute for a malfunctioning part of the body. Crowns generally qualify as such. See, 86 Ill. Adm. Code 130.310, enclosed.

Also, dentists incur Use Tax when they buy consumable supplies and fixed assets for use in their practice (see 86 Ill. Adm. Code 130.310) that are not transferred to patients. Examples of items that would be subject to the full rate of tax when sold to dentists are dental hand instruments, materials used for dental impressions, as well as other items used by the dentist which do not become a physical part of teeth or dentures. Examples of items that qualify for the 1% rate of tax are anesthetics, medicines, and dental prostheses such as dentures.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

Jerilynn Gorden

Senior Counsel – Sales and Excise Taxes

SM:JTG:msk

Enc.